

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 24, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANIEL S.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 1:21-cv-03078-MKD

ORDER DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

ECF Nos. 16, 17

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

² Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 Before the Court are the parties' cross-motions for summary judgment. ECF
2 Nos. 16, 17. The Court, having reviewed the administrative record and the parties'
3 briefing, is fully informed. For the reasons discussed below, the Court denies
4 Plaintiff's motion, ECF No. 16, and grants Defendant's motion, ECF No. 17.

5 JURISDICTION

6 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

7 STANDARD OF REVIEW

8 A district court's review of a final decision of the Commissioner of Social
9 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
10 limited; the Commissioner's decision will be disturbed "only if it is not supported
11 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
12 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
13 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
14 (quotation and citation omitted). Stated differently, substantial evidence equates to
15 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
16 citation omitted). In determining whether the standard has been satisfied, a
17 reviewing court must consider the entire record as a whole rather than searching
18 for supporting evidence in isolation. *Id.*

19 In reviewing a denial of benefits, a district court may not substitute its
20 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,

1 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
2 rational interpretation, [the court] must uphold the ALJ’s findings if they are
3 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
4 F.3d 1104, 1111 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §
5 416.902(a). Further, a district court “may not reverse an ALJ’s decision on
6 account of an error that is harmless.” *Id.* An error is harmless “where it is
7 inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115
8 (quotation and citation omitted). The party appealing the ALJ’s decision generally
9 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.
10 396, 409-10 (2009).

11 **FIVE-STEP EVALUATION PROCESS**

12 A claimant must satisfy two conditions to be considered “disabled” within
13 the meaning of the Social Security Act. First, the claimant must be “unable to
14 engage in any substantial gainful activity by reason of any medically determinable
15 physical or mental impairment which can be expected to result in death or which
16 has lasted or can be expected to last for a continuous period of not less than twelve
17 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
18 “of such severity that he is not only unable to do his previous work[,], but cannot,
19 considering his age, education, and work experience, engage in any other kind of
20

1 substantial gainful work which exists in the national economy.” 42 U.S.C. §
2 1382c(a)(3)(B).

3 The Commissioner has established a five-step sequential analysis to
4 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
5 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work
6 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial
7 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
8 C.F.R. § 416.920(b).

9 If the claimant is not engaged in substantial gainful activity, the analysis
10 proceeds to step two. At this step, the Commissioner considers the severity of the
11 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
12 “any impairment or combination of impairments which significantly limits [his or
13 her] physical or mental ability to do basic work activities,” the analysis proceeds to
14 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
15 this severity threshold, however, the Commissioner must find that the claimant is
16 not disabled. *Id.*

17 At step three, the Commissioner compares the claimant’s impairment to
18 severe impairments recognized by the Commissioner to be so severe as to preclude
19 a person from engaging in substantial gainful activity. 20 C.F.R. §
20 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the

1 enumerated impairments, the Commissioner must find the claimant disabled and
2 award benefits. 20 C.F.R. § 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
8 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

9 At step four, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing work that he or she has performed in
11 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
12 capable of performing past relevant work, the Commissioner must find that the
13 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
14 performing such work, the analysis proceeds to step five.

15 At step five, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
18 must also consider vocational factors such as the claimant's age, education and
19 past work experience. *Id.* If the claimant is capable of adjusting to other work, the
20 Commissioner must find that the claimant is not disabled. 20 C.F.R. §

1 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
2 analysis concludes with a finding that the claimant is disabled and is therefore
3 entitled to benefits. *Id.*

4 The claimant bears the burden of proof at steps one through four above.
5 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
6 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
7 capable of performing other work; and (2) such work “exists in significant
8 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
9 700 F.3d 386, 389 (9th Cir. 2012).

10 **ALJ’S FINDINGS**

11 On January 7, 2019, Plaintiff applied for Title XVI supplemental security
12 income benefits alleging a disability onset date of January 1, 2018.³ Tr. 15, 124,
13 259-67. The application was denied initially, and on reconsideration. Tr. 191-94,
14 200-06. Plaintiff appeared before an administrative law judge (ALJ) on September
15

16
17 ³ Plaintiff previously applied for Title II and Title XVI benefits on December 28,
18 2016; the application resulted in an unfavorable decision. Tr. 15, 66, 87. The
19 Appeals Council denied review, and on February 24, 2020, this Court denied
20 Plaintiff’s motion for summary judgment. Tr. 15, 88-93, 140-85.

1 8, 2020. Tr. 36-65. On October 1, 2020, the ALJ denied Plaintiff's claim. Tr. 12-
2 35.

3 At step one of the sequential evaluation process, the ALJ found Plaintiff has
4 not engaged in substantial gainful activity since January 7, 2019. Tr. 17. At step
5 two, the ALJ found that Plaintiff has the following severe impairments: diabetes
6 mellitus with peripheral neuropathy; internal derangement of the right knee;
7 degenerative disc disease; post-traumatic stress disorder (PTSD); and bipolar
8 disorder. *Id.*

9 At step three, the ALJ found Plaintiff does not have an impairment or
10 combination of impairments that meets or medically equals the severity of a listed
11 impairment. Tr. 18. The ALJ then concluded that Plaintiff has the RFC to perform
12 light work with the following limitations:

13 [Plaintiff] is able to lift and/or carry 20 pounds occasionally and 10
14 pounds frequently. He can stand and/or walk about 6 hours in an 8-
15 hour workday and can sit about 6 hours. He can occasionally climb
16 ramps, stairs, ladders, ropes, and scaffolds. He can frequently stoop,
17 kneel, and crawl. He can only occasionally crouch. He should have
18 only occasional exposure to excessive vibrations, hazardous
19 machinery, and unprotected heights. He is able to understand,
20 remember, and carry out simple, routine instructions and have only
- brief and superficial interactions with supervisors, coworkers, and the
public.

Tr. 20.

At step four, the ALJ found Plaintiff has no past relevant work. Tr. 29. At
step five, the ALJ found that, considering Plaintiff's age, education, work

1 experience, RFC, and testimony from the vocational expert, there were jobs that
2 existed in significant numbers in the national economy that Plaintiff could perform,
3 such as electrical accessories assembler, small products assembler, and hand
4 packager and inspector. Tr. 30. Therefore, the ALJ concluded Plaintiff was not
5 under a disability, as defined in the Social Security Act, from the date of the
6 application through the date of the decision. Tr. 31.

7 On April 15, 2021, the Appeals Council denied review of the ALJ's
8 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
9 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

10 ISSUES

11 Plaintiff seeks judicial review of the Commissioner's final decision denying
12 him supplemental security income benefits under Title XVI of the Social Security
13 Act. Plaintiff raises the following issues for review:

- 14 1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 15 2. Whether the ALJ properly evaluated the medical opinion evidence.

16 ECF No. 16 at 2.

17 DISCUSSION

18 A. Plaintiff's Symptom Claims

19 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
20 convincing in discrediting his symptom claims. ECF No. 16 at 4-11. An ALJ

engages in a two-step analysis to determine whether to discount a claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted). "The claimant is not required to show that [the claimant's] impairment could reasonably be expected to cause the severity of the symptom [the claimant] has alleged; [the claimant] need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). General findings are insufficient; rather, the ALJ must identify what symptom claims are being discounted and what evidence undermines these claims. *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834; (9th Cir. 1996); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why it discounted claimant's symptom claims)). "The clear and convincing [evidence] standard is the most demanding required in Social Security

1 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
2 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

3 Factors to be considered in evaluating the intensity, persistence, and limiting
4 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
5 duration, frequency, and intensity of pain or other symptoms; 3) factors that
6 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
7 side effects of any medication an individual takes or has taken to alleviate pain or
8 other symptoms; 5) treatment, other than medication, an individual receives or has
9 received for relief of pain or other symptoms; 6) any measures other than treatment
10 an individual uses or has used to relieve pain or other symptoms; and 7) any other
11 factors concerning an individual’s functional limitations and restrictions due to
12 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
13 416.929(c). The ALJ is instructed to “consider all of the evidence in an
14 individual’s record,” to “determine how symptoms limit ability to perform work-
15 related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

16 The ALJ found that Plaintiff’s medically determinable impairments could
17 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff’s
18 statements concerning the intensity, persistence, and limiting effects of his
19 symptoms were not entirely consistent with the evidence. Tr. 21.

20 *1. Inconsistent Objective Medical Evidence*

1 The ALJ found Plaintiff's symptom claims were inconsistent with the
2 objective medical evidence. Tr. 21-26. An ALJ may not discredit a claimant's
3 symptom testimony and deny benefits solely because the degree of the symptoms
4 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
5 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
6 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400
7 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
8 relevant factor, along with the medical source's information about the claimant's
9 pain or other symptoms, in determining the severity of a claimant's symptoms and
10 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 416.929(c)(2).

11 First, the ALJ found the objective evidence is inconsistent with Plaintiff's
12 reported significant physical limitations. Tr. 22-24. As discussed further *infra*,
13 despite reported significant symptoms, Plaintiff sought minimal treatment for his
14 physical complaints. Plaintiff contends that because there is a lack of evidence,
15 there is no inconsistency to point to besides a single sensory examination. ECF
16 No. 16 at 7. However, Plaintiff alleges ongoing significant limitations due to
17 peripheral neuropathy, and a single sensory examination in the file is inconsistent
18 with his allegation. Tr. 23. Further, despite abnormal sensation, Plaintiff had a
19 normal gait. Tr. 401-02. Although Plaintiff had tenderness and decreased range of
20 motion in his back, and tenderness/crepitus of the right knee, Plaintiff had a

1 negative straight leg raise test, normal coordination/station/gait, and normal range
2 of motion in his knees. Tr. 401-02. When he was compliant with treatment,
3 Plaintiff's diabetes improved, and physical examinations did not document any
4 abnormalities to support Plaintiff's reported symptoms and limitations. Tr. 22-23,
5 496-97, 572-73, 632, 638-39. The ALJ reasonably found the objective evidence is
6 inconsistent with Plaintiff's physical complaints.

7 Second, the ALJ found the objective evidence is inconsistent with Plaintiff's
8 reported significant mental health limitations. Tr. 24-26. As discussed further
9 *infra*, despite Plaintiff's allegations of significant limitations, he sought minimal
10 treatment. In January 2019, Plaintiff was depressed and anxious with a moderate
11 impairment of judgment, but his examination was otherwise normal. Tr. 24, 442.
12 At a February 2019 examination, Plaintiff had a largely normal examination, with
13 normal mood/affect, orientation, and concentration, and while he had some errors
14 on memory and calculation testing, he was able to perform some of the tasks
15 correctly. Tr. 406-07. In July 2019, Plaintiff appeared slumped but otherwise had
16 a normal examination. Tr. 460-61. At appointments in November and December
17 2019, Plaintiff had normal mood, affect, orientation, judgment, cognition, thought
18 content, and cooperation. Tr. 25 (citing Tr. 619, 624, 626, 110-11). In April 2020,
19 Plaintiff had abnormal insight/judgment, and otherwise had a normal examination.
20 Tr. 503-04. The ALJ reasonably found Plaintiff's allegations of significant mental

1 health limitations were inconsistent with the objective medical evidence. This was
2 a clear and convincing reason, along with the other reasons offered, to reject
3 Plaintiff's symptom claims.

4 2. *Lack of Treatment*

5 The ALJ found Plaintiff's lack of treatment was inconsistent with his
6 allegations. Tr. 22-25. An unexplained, or inadequately explained, failure to seek
7 treatment or follow a prescribed course of treatment may be considered when
8 evaluating the claimant's subjective symptoms. *Orn v. Astrue*, 495 F.3d 625, 638
9 (9th Cir. 2007). And evidence of a claimant's self-limitation and lack of
10 motivation to seek treatment are appropriate considerations in determining the
11 credibility of a claimant's subjective symptom reports. *Osenbrock v. Apfel*, 240
12 F.3d 1157, 1165-66 (9th Cir. 2001); *Bell-Shier v. Astrue*, 312 F. App'x 45, *3 (9th
13 Cir. 2009) (unpublished opinion) (considering why plaintiff was not seeking
14 treatment). When there is no evidence suggesting that the failure to seek or
15 participate in treatment is attributable to a mental impairment rather than a
16 personal preference, it is reasonable for the ALJ to conclude that the level or
17 frequency of treatment is inconsistent with the alleged severity of complaints.
18 *Molina*, 674 F.3d at 1113-14. But when the evidence suggests lack of mental
19 health treatment is partly due to a claimant's mental health condition, it may be
20 inappropriate to consider a claimant's lack of mental health treatment when

1 evaluating the claimant's failure to participate in treatment. *Nguyen v. Chater*, 100
2 F.3d 1462, 1465 (9th Cir. 1996).

3 The ALJ noted Plaintiff's treatment was primarily for diabetes. Tr. 22.
4 Plaintiff's diabetes with peripheral neuropathy was generally managed with diet,
5 medication, and blood sugar monitoring. *Id.* In January 2019, he discontinued his
6 medications, complaining they were too bulky to carry around, and he refused
7 insulin. *Id.* (citing Tr. 371). In March 2020, Plaintiff reported only taking his
8 medications "sometimes." Tr. 23 (citing Tr. 568). Plaintiff did not take any
9 medications specifically for his reported neuropathy symptoms.

10 Despite complaining of back pain, Plaintiff never followed up on an
11 orthopedic referral nor imaging. Tr. 23 (citing Tr. 583). Plaintiff only
12 intermittently reported back pain and did not seek any treatment for his back. Tr.
13 23. Plaintiff contends he routinely complained of back pain, and NSAIDs were
14 recommended, as well as acupuncture. ECF No. 16 at 8-9. However, Plaintiff
15 does not point to any evidence he sought acupuncture and does not offer an
16 explanation as to why he did not pursue acupuncture. While there are other
17 physical diagnoses in the file, Plaintiff also did not pursue treatment for those
18 impairments, such as his knee impairment. Tr. 24.

19 Regarding his mental health impairments, Plaintiff also sought limited
20 mental health treatment. Tr. 24. There is an eleven-month gap in treatment from

1 February 2018 through January 2019, and another gap in treatment from January
2 until July 2019 when Plaintiff sought an incapacity evaluation for benefits. *Id.*
3 Although Plaintiff was prescribed psychiatric medications, he reported he stopped
4 taking them in February 2020 because they made him tired and there was no point
5 taking them. Tr. 25. Plaintiff contends the ALJ erred in considering his lack of
6 mental health care because he has mental impairments and difficulty getting along
7 with others. ECF No. 16 at 9. However, Plaintiff does not cite to any evidence
8 that his impairments prevented him from seeking ongoing care. On this record, the
9 ALJ reasonably found Plaintiff's lack of treatment was inconsistent with his
10 allegations. This was a clear and convincing reason, supported by substantial
11 evidence, to reject Plaintiff's claims.

12 3. *Inconsistent Statements*

13 The ALJ found Plaintiff made inconsistent statements about his reported
14 symptoms and work history. Tr. 26. In evaluating a claimant's symptom claims,
15 an ALJ may consider the consistency of an individual's own statements made in
16 connection with the disability-review process with any other existing statements or
17 conduct under other circumstances. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th
18 Cir. 1996) (The ALJ may consider "ordinary techniques of credibility evaluation,"
19 such as reputation for lying, prior inconsistent statements concerning symptoms,
20 and other testimony that "appears less than candid."). Moreover, evidence that the

1 claimant was motivated by secondary gain is sufficient to support an ALJ's
2 rejection of testimony. *Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1020
3 (9th Cir. 1992). Therefore, the tendency to exaggerate or engage in manipulative
4 conduct during the administrative process is a permissible reason to discount the
5 credibility of the claimant's reported symptoms. *Tonapetyan v. Halter*, 242 F.3d
6 1144, 1148 (9th Cir. 2001).

7 The ALJ noted that Plaintiff reported his jobs ending due to irritability and
8 difficulty getting along with others, while also reporting getting along well with
9 past supervisors and some coworkers. Tr. 26. While he reported constant
10 difficulty sleeping, he also reported getting more than eight hours of sleep per
11 night, without issue falling asleep nor with awakenings, and feeling rested. Tr. 26,
12 405. While he has reported significant difficulties interacting with others, he
13 reported having a social network including his mother, friends, and individuals at
14 Neighborhood Health. Tr. 26, 405, 419-20, 607.

15 While Plaintiff reported using a cane, medical records do not document the
16 use of an assistive device nor a prescription for a cane. Tr. 23, 26, 403, 406. An
17 ALJ may discount a claimant's subjective complaints based on the unprescribed
18 use of an assistive device, such as a cane. *See Chaudhry v. Astrue*, 688 F.3d 661,
19 671 (9th Cir. 2012); *see also Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir.
20 2008). At a consultative examination, Plaintiff reported he was not using a cane

1 but stated he needed one because his legs “give out.” Tr. 406. Plaintiff had a
2 normal gait without a cane. Tr. 401.

3 The ALJ also found Plaintiff was motivated by secondary gain. Tr. 26. The
4 ALJ noted Plaintiff reported more significant limitations in connection with his
5 application for benefits, which are not supported by the record. *Id.* Plaintiff
6 sought limited treatment for his allegedly disabling symptoms, and when he
7 returned for an examination, he stated it was so he could get housing and SSI, and
8 pursue schooling for management or computers. *Id.* (citing Tr. 422). While
9 Plaintiff contends his own perception of his ability to attend school or work is not
10 indicative of whether he could actually work, Plaintiff’s perceptions of his ability
11 is a valid consideration when determining the consistency of Plaintiff’s statements.
12 *See Barnes v. Comm’r of Soc. Sec.*, No. 2:16-CV-00402-MKD, 2018 WL 545722,
13 at *5 (E.D. Wash. Jan. 24, 2018) (“Evidence of Plaintiff’s preparedness to return to
14 work, even if an optimistic self-assessment, is significant to the extent that the
15 Plaintiff is willing and able to work, as that belief indicates her allegation of
16 symptoms precluding work are not credible.”). This was a clear and convincing
17 reason, supported by substantial evidence, for the ALJ to reject Plaintiff’s claims.

18 4. *Activities of Daily Living*

19 The ALJ found Plaintiff’s activities of daily living were inconsistent with his
20 allegations. Tr. 26. The ALJ may consider a claimant’s activities that undermine

1 reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a substantial
2 part of the day engaged in pursuits involving the performance of exertional or non-
3 exertional functions, the ALJ may find these activities inconsistent with the
4 reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*, 674 F.3d at 1113.
5 “While a claimant need not vegetate in a dark room in order to be eligible for
6 benefits, the ALJ may discount a claimant’s symptom claims when the claimant
7 reports participation in everyday activities indicating capacities that are
8 transferable to a work setting” or when activities “contradict claims of a totally
9 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

10 The ALJ noted that despite his reported significant physical limitations,
11 Plaintiff reported walking everywhere, leaving the house daily, and running on
12 occasion. Tr. 26 (citing Tr. 405, 611). Plaintiff also reported being able to wash
13 dishes, handle housekeeping, and tend a garden. Tr. 26. Plaintiff is able to care for
14 a dog, prepare meals daily, handle laundry, and grocery shop. Tr. 306-08.
15 Although Plaintiff reported difficulties interacting with others, he also reported
16 having a social network of friends and maintaining a four-year romantic
17 relationship. Tr. 26, 399. Plaintiff reported going to churches and the library, and
18 spending time with a cousin. Tr. 309, 399. The ALJ reasonably found Plaintiff’s
19 activities of daily living were inconsistent with his claims. This was a clear and
20

1 convincing reason, supported by substantial evidence, to reject Plaintiff's symptom
2 claims. Plaintiff is not entitled to remand on these grounds.

3 **B. Medical Opinion Evidence**

4 Plaintiff contends the ALJ erred in his consideration of the opinions of
5 William Drenguis, M.D., and Steven Olmer, Psy.D. ECF No. 16 at 11-19.

6 As an initial matter, for claims filed on or after March 27, 2017, new
7 regulations apply that change the framework for how an ALJ must evaluate
8 medical opinion evidence. *Revisions to Rules Regarding the Evaluation of*
9 *Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20
10 C.F.R. § 416.920c. The new regulations provide that the ALJ will no longer "give
11 any specific evidentiary weight . . . to any medical opinion(s)" *Revisions to*
12 *Rules*, 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; *see* 20 C.F.R. §
13 416.920c(a). Instead, an ALJ must consider and evaluate the persuasiveness of all
14 medical opinions or prior administrative medical findings from medical sources.
15 20 C.F.R. § 416.920c(a)-(b). The factors for evaluating the persuasiveness of
16 medical opinions and prior administrative medical findings include supportability,
17 consistency, relationship with the claimant (including length of the treatment,
18 frequency of examinations, purpose of the treatment, extent of the treatment, and
19 the existence of an examination), specialization, and "other factors that tend to
20 support or contradict a medical opinion or prior administrative medical finding"

(including, but not limited to, “evidence showing a medical source has familiarity with the other evidence in the claim or an understanding of our disability program’s policies and evidentiary requirements”). 20 C.F.R. § 416.920c(c)(1)-(5).

Supportability and consistency are the most important factors, and therefore the ALJ is required to explain how both factors were considered. 20 C.F.R. § 416.920c(b)(2). Supportability and consistency are explained in the regulations:

(1) *Supportability*. The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.

(2) *Consistency*. The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be.

20 C.F.R. § 416.920c(c)(1)-(2). The ALJ may, but is not required to, explain how the other factors were considered. 20 C.F.R. § 416.920c(b)(2). However, when two or more medical opinions or prior administrative findings “about the same issue are both equally well-supported . . . and consistent with the record . . . but are not exactly the same,” the ALJ is required to explain how “the other most persuasive factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R. § 416.920c(b)(3).

1 The Ninth Circuit addressed the issue of whether the changes to the
2 regulations displace the longstanding case law requiring an ALJ to provide specific
3 and legitimate reasons to reject an examining provider's opinion. *Woods v.*
4 *Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new
5 regulations eliminate any hierarchy of medical opinions, and the specific and
6 legitimate standard no longer applies. *Id.* The Court reasoned the "relationship
7 factors" remain relevant under the new regulations, and thus the ALJ can still
8 consider the length and purpose of the treatment relationship, the frequency of
9 examinations, the kinds and extent of examinations that the medical source has
10 performed or ordered from specialists, and whether the medical source has
11 examined the claimant or merely reviewed the claimant's records. *Id.* at 792.
12 However, the ALJ is not required to make specific findings regarding the
13 relationship factors. *Id.* Even under the new regulations, an ALJ must provide an
14 explanation supported by substantial evidence when rejecting an examining or
15 treating doctor's opinion as unsupported or inconsistent. *Id.*

16 *I. Dr. Drenguis*

17 On February 1, 2019, Dr. Drenguis, an examining source, conducted a
18 physical examination and rendered an opinion on Plaintiff's functioning. Tr. 398-
19 403. Dr. Drenguis diagnosed Plaintiff with low back pain; right knee internal
20 derangement; and diabetes mellitus with peripheral neuropathy of both feet. Tr.

402. Dr. Drenguis opined Plaintiff's maximum standing/walking capacity is "at least four hours," and his maximum sitting capacity is "at least four hours"; he can lift/carry 20 pounds occasionally and 10 pounds frequently; he can frequently balance and occasionally climb, stoop, kneel, crouch, and crawl; and he has no manipulative nor workplace environmental limits. Tr. 402-03. The ALJ found some of Dr. Drenguis' opinion has support in examination findings, but the ALJ found the opinion as to Plaintiff's ability to stand/walk was not supported nor consistent with the evidence. Tr. 27. The ALJ found the State agency opinions "more persuasive" but did not otherwise specify how persuasive he found Dr. Drenguis' opinion. Tr. 27.

First, the ALJ found Dr. Drenguis' opinion that Plaintiff is limited to "at least four hours" of standing/walking is vague. Tr. 27. How well an opinion is supported by an explanation is a relevant consideration. 20 C.F.R. § 416.920c(c)(1). Dr. Drenguis did not explain what the maximum amount of time is that Plaintiff can stand or walk for in a workday. *See* Tr. 402-03. The ALJ reasonably found Dr. Drenguis' opinion was vague as to the maximum time Plaintiff is capable of standing/walking.

Second, the ALJ found Dr. Drenguis' opinion is not consistent with the objective evidence. Tr. 27. Consistency is one of the most important factors an ALJ must consider when determining how persuasive a medical opinion is. 20

1 C.F.R. § 416.920c(b)(2). The more consistent an opinion is with the evidence
2 from other sources, the more persuasive the opinion is. 20 C.F.R. §
3 416.920c(c)(2). The ALJ found Dr. Drenguis' opinion was not consistent with
4 later records, which do not contain any objective evidence documenting impaired
5 sensation, balance, nor mobility deficits. Tr. 27. As discussed *supra*, Plaintiff
6 sought limited treatment for his impairments, and the minimal examinations
7 document largely normal physical examinations. *See, e.g.*, Tr. 394, 42-3, 486, 496-
8 97, 572-73, 632, 638-39. Plaintiff contends the lack of evidence to support Dr.
9 Drenguis' opinion is not inconsistent with the opinion, as the ALJ has no normal
10 sensory examinations to point to, and Plaintiff had ongoing uncontrolled diabetes.
11 ECF No. 16 at 15. However, Plaintiff responded well to gabapentin. Tr. 388.
12 Further, Plaintiff's claims alone are not sufficient to establish disability; there must
13 be objective evidence to support his claims. *See* SSR 16-3p. The ALJ reasonably
14 found Dr. Drenguis' opinion was inconsistent with the objective evidence.

15 Third, the ALJ found the State agency opinions were more persuasive than
16 Dr. Drenguis' opinion. Tr. 27. Consistency and supportability are the two most
17 important factors when considering the persuasiveness of medical opinions. 20
18 C.F.R. § 416.920c(b)(2). Dr. Virji and Dr. Staley opined Plaintiff was capable of
19 light work with occasional climbing and crouching; frequent stooping, kneeling,
20 and crawling; and without concentrated exposure to vibration or hazards. Tr. 27

(citing Tr. 118-19, 134-3). The ALJ adopted the State agency opinions. Tr. 27. The ALJ found the opinions are well-supported by references to generally normal findings, and consistent with the longitudinal evidence that document largely normal examinations. *Id.* The State agency opinions are also consistent with the opinions of Mr. Heath and Ms. Banks, who both opined Plaintiff can perform light work. *Id.*, Tr. 478-80, 488-90. The ALJ reasonably found the State agency opinions are more persuasive than Dr. Drenguis' opinion. The ALJ did not err in his consideration of Dr. Drenguis' opinion.

2. *Dr. Olmer*

Dr. Olmer examined Plaintiff and rendered an opinion on his functioning on two occasions. Tr. 457-61, 500-04. Dr. Olmer was noted as the supervising provider and reviewed and approved the record of one visit Plaintiff had with another provider; it is unclear if Dr. Olmer participated as a member of a treatment team on other occasions. Tr. 616-17. Plaintiff reported Dr. Olmer was a treating provider, Tr. 56, but Plaintiff cites only to the two examinations and not to any treatment records that document Dr. Olmer had an ongoing treatment relationship with Plaintiff, ECF No. 16 at 16-19.

On July 22, 2019, Dr. Olmer conducted a psychological examination and rendered an opinion on Plaintiff's functioning. Tr. 457-61. Dr. Olmer diagnosed Plaintiff with chronic PTSD, insomnia, and cannabis dependence. Tr. 459. He

1 opined Plaintiff has no to mild limitations in his ability to understand, remember,
2 and persist in tasks by following very short and simple instructions, perform
3 routine tasks without special supervision, and make simple work-related decisions;
4 moderate limitations in his ability to understand, remember, and persist in tasks by
5 following detailed instructions, perform activities within a schedule, maintain
6 regular attendance, and be punctual within customary tolerances without special
7 supervision, learn new tasks, ask simple questions or request assistance,
8 communicate and perform effectively in a work setting, and set realistic goals and
9 plan independently; and marked limitations in his ability to adapt to changes in a
10 routine work setting, be aware of normal hazards and take appropriate precautions,
11 maintain appropriate behavior in a work setting, and complete a normal
12 workday/workweek without interruptions from psychologically based symptoms.
13 Tr. 459. Dr. Olmer further opined Plaintiff's impairments overall have a marked
14 severity rating, and the limitations are expected to last 10 to 15 months with
15 treatment. Tr. 459-60.

16 On April 13, 2020, Dr. Olmer conducted another psychological examination
17 and rendered another opinion on Plaintiff's functioning. Tr. 500-04. Dr. Olmer
18 again diagnosed Plaintiff with chronic PTSD, insomnia, and cannabis dependence.
19 Tr. 502. He opined Plaintiff has no to mild limitations in his ability to understand,
20 remember, and persist in tasks by following very short and simple instructions,

1 perform routine tasks without special supervision, and make simple work-related
2 decisions; moderate limitations in his ability to understand, remember, and persist
3 in tasks by following detailed instructions, perform activities within a schedule,
4 maintain regular attendance, and be punctual within customary tolerances without
5 special supervision, learn new tasks, adapt to changes in a routine work setting, be
6 aware of normal hazards and take appropriate precautions, ask simple questions or
7 request assistance, communicate and perform effectively in a work setting, and set
8 realistic goals and plan independently; and marked limitations in his ability to
9 maintain appropriate behavior in a work setting and a complete a normal
10 workday/workweek without interruptions from psychologically based symptoms.

11 Tr. 502. The ALJ found Dr. Olmer's opinions that Plaintiff had marked limitations
12 are not persuasive. Tr. 28-29.

13 First, the ALJ found Dr. Olmer's opinions that Plaintiff has some marked
14 limitations is not supported by Dr. Olmer's explanations nor examination notes.

15 *Id.* Supportability is one of the most important factors an ALJ must consider when
16 determining how persuasive a medical opinion is. 20 C.F.R. § 416.920c(b)(2).

17 The more relevant objective evidence and supporting explanations that support a
18 medical opinion, the more persuasive the medical opinion is. 20 C.F.R. §

19 416.920c(c)(1). Dr. Olmer's examinations contained largely normal findings. Tr.
20 28-29, 460-61, 503-04. Dr. Olmer completed two questionnaires, which do not

1 contain explanations for his opinion. *See* Tr. 457-61, 500-04. The record
2 accompanying the 2019 opinion states only that “the impact of symptoms was
3 found to be at a marked level with a prognosis of 10-15 months with consistent
4 counseling and marijuana reduction,” but no explanation of why the symptoms
5 caused marked limitations. Tr. 468. The record accompanying the 2020 opinion
6 states Plaintiff’s symptoms appear to impact him at a marked level, but again does
7 not explain how the symptoms cause marked limitations. Tr. 57. Plaintiff
8 contends Dr. Olmer’s opinions are consistent with Plaintiff’s reported subjective
9 symptoms, however Plaintiff does not cite to any objective evidence to support his
10 claims. ECF No. 16 at 17. The ALJ reasonably found Dr. Olmer’s opinions were
11 not supported by an explanation nor examination findings.

12 Second, the ALJ found Dr. Olmer’s opinions were inconsistent with the
13 objective medical evidence as a whole. Tr. 28-29. Consistency is one of the most
14 important factors an ALJ must consider when determining how persuasive a
15 medical opinion is. 20 C.F.R. § 416.920c(b)(2). The more consistent an opinion is
16 with the evidence from other sources, the more persuasive the opinion is. 20
17 C.F.R. § 416.920c(c)(2). The ALJ found Plaintiff’s mental health records
18 generally documented normal mental status findings, including normal
19 cooperation, cognition, memory, thought processes, mood, affect, and grooming.
20 Tr. 28-29. Although there are intermittent abnormalities, such as reported

1 irritability and anger, and one occasion of tangential thinking, the minimal
2 abnormalities are not consistent with marked limitations. *See* Tr. 19, 29, 406-07,
3 552, 565, 605. While Plaintiff contends this was not a valid reason to reject Dr.
4 Olmer's opinion because Dr. Olmer also based his opinion on his examinations,
5 Dr. Olmer's examinations were also largely normal, as discussed *supra*. ECF No.
6 16 at 18. The ALJ also noted that despite Plaintiff's reported difficulty engaging
7 with others, he was able to sustain a four-year relationship, and reported a desire to
8 return to school. Tr. 28. The ALJ reasonably found Dr. Olmer's opinions were
9 inconsistent with the objective evidence.

10 Third, the ALJ found Dr. Olmer's 2020 opinion was internally inconsistent.
11 Tr. 29. The more relevant objective evidence and supporting explanations that
12 support a medical opinion, the more persuasive the medical opinion is. 20 C.F.R. §
13 416.920c(c)(1). While Dr. Olmer noted Plaintiff's insight and judgment were
14 abnormal, the explanation only includes a quote from Plaintiff, "Marijuana is the
15 only thing that treats my anger and doesn't make me so tired that I can't do
16 anything else." Tr. 504. On the record accompanying the questionnaire, Dr.
17 Olmer noted "Insight: Difficulty acknowledging presence of substance abuse
18 problems." Tr. 52. Dr. Olmer did not give any further explanation regarding how
19 Plaintiff's insight/judgment were abnormal. Despite finding Plaintiff's statement
20 about his drug use amounted to abnormal insight/judgment, and that Plaintiff has

1 “substance abuse problems,” Dr. Olmer also opined Plaintiff’s substance use was
2 not the primary cause of his limitations and substance use treatment is not
3 recommended. Tr. 503. The ALJ found the two statements inconsistent and noted
4 there was no explanation to reconcile the discrepancy. Tr. 28. Plaintiff contends
5 there is no inconsistency. ECF No. 16 at 19. As the only documented abnormality
6 on examination related to Plaintiff’s substance use, and Dr. Olmer did not provide
7 any explanation, the ALJ reasonably found there was an unexplained internal
8 inconsistency in the opinion. Plaintiff is not entitled to remand on these grounds.

9 CONCLUSION

10 Having reviewed the record and the ALJ’s findings, the Court concludes the
11 ALJ’s decision is supported by substantial evidence and free of harmful legal error.
12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. The District Court Executive is directed to substitute Kilolo Kijakazi as
14 Defendant and update the docket sheet.

15 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.

16 3. Defendant’s Motion for Summary Judgment, **ECF No. 17**, is
17 **GRANTED**.

18 4. The Clerk’s Office shall enter **JUDGMENT** in favor of Defendant.
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1 The District Court Executive is directed to file this Order, provide copies to
2 counsel, and **CLOSE THE FILE.**

3 DATED February 24, 2023.

4 *s/Mary K. Dimke*
5 MARY K. DIMKE
6 UNITED STATES DISTRICT JUDGE
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